

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAY CHARLES HARRIS,

Plaintiff,

V.

C. JAMES, et al.,

Defendants.

CASE NO. 3:16-CV-05044-BHS-DWC

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

The District Court has referred this 42 U.S.C. § 1983 action to United States Magistrate

Judge David W. Christel. Currently pending in this action is Plaintiff's Motion for Appointment of Counsel. Dkt. 97.

No constitutional right to appointed counsel exists in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); see *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), overruled on other grounds, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the Court must evaluate both “the likelihood of success on the merits [and] the ability of the

1 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”
2 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (*quoting Weygandt v. Look*, 718
3 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp
4 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of
5 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

6 In Plaintiff’s Motion, he states he is unable to afford counsel, his incarceration greatly
7 limits his ability to litigate this case, and the staff at the correctional facility at which he is
8 housed is colluding with Defendants to alter Court documents. Dkt. 97.

9 At this time, Plaintiff has not shown, nor does the Court find, this case involves complex
10 facts or law. Plaintiff has also not shown he is likely to succeed on the merits of his case or
11 shown an inability to articulate the factual basis of his claims in a fashion understandable to the
12 Court. For example, Plaintiff clearly articulated his claims in four complaints and various
13 motions. Additionally, the Court has recommended all but one claim alleged in the Fourth
14 Amended Complaint be dismissed. *See* Dkt. 98. The Court also notes “Plaintiff’s incarceration
15 and limited access to legal materials are not exceptional factors constituting exceptional
16 circumstances that warrant the appointment of counsel. Rather, they are the type of difficulties
17 encountered by many pro se litigants.” *Dancer v. Jeske*, 2009 WL 1110432, *1 (W.D. Wash.
18 Apr. 24, 2009). Therefore, the Court finds Plaintiff has failed to show the appointment of counsel
19 is appropriate at this time. Accordingly, Plaintiff’s Motion (Dkt. 97) is denied without prejudice.

20 Dated this 5th day of June, 2017.

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David W. Christel
United States Magistrate Judge